

Department of Veterans Affairs

§3.316

the minimum service requirements of §3.12a.)

(Authority: 38 U.S.C. 3702, 3707)

(c) *Veterans' educational assistance.* (1) A determination is required as to whether a veteran was discharged or released from active duty service because of a service-connected disability (or whether the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever any of the following circumstances exist:

(i) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 5303A apply to him or her, and the veteran would be eligible for such benefits only if—

(A) He or she was discharged or released from active duty for a disability incurred or aggravated in line of duty, or

(B) He or she has a disability that VA has determined to be compensable under 38 U.S.C. chapter 11; or

(ii) The veteran applies for benefits under 38 U.S.C. chapter 30 and—

(A) The evidence of record does not clearly show either that the veteran was discharged or released from active duty for disability or that the veteran's discharge or release from active duty was unrelated to disability, and

(B) The veteran is eligible for basic educational assistance except for the minimum length of active duty service requirements of §21.7042(a) or §21.7044(a) of this chapter.

(2) A determination is required as to whether a veteran was discharged or released from service in the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA determines is not service connected when the veteran applies for benefits under 38 U.S.C. chapter 30 and—

(i) Either the veteran would be eligible for basic educational assistance under that chapter only if he or she was discharged from the Selected Reserve for a service-connected dis-

ability, or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected, or

(ii) The veteran is entitled to basic educational assistance and would be entitled to receive it at the rates stated in §21.7136(a) or §21.7137(a) of this chapter only if he or she was discharged from the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected.

(3) A determination is required as to whether a reservist has been unable to pursue a program of education due to a disability which has been incurred in or aggravated by service in the Selected Reserve when—

(i) The reservist is otherwise entitled to educational assistance under 10 U.S.C. chapter 1606, and

(ii) He or she applies for an extension of his or her eligibility period.

(4) The determinations required by paragraphs (c)(1) through (c)(3) of this section are subject to the presumptions of incurrence under §3.304(b) and aggravation under §3.306 (a) and (c) of this part, based on service rendered after May 7, 1975.

(Authority: 38 U.S.C. 3011(a)(1)(A)(ii), 3012(b)(1), 3202(1)(A), 10 U.S.C. 16133(b))

[38 FR 871, Jan. 5, 1973, as amended at 42 FR 22869, May 5, 1977; 50 FR 53315, Dec. 31, 1985; 51 FR 1510, Jan. 14, 1986; 55 FR 25974, June 26, 1990; 61 FR 67950, Dec. 26, 1996]

§3.316 Claims based on chronic effects of exposure to mustard gas and Lewisite.

(a) Except as provided in paragraph (b) of this section, exposure to the specified vesicant agents during active military service under the circumstances described below together with the subsequent development of any of the indicated conditions is sufficient to establish service connection for that condition:

(1) Full-body exposure to nitrogen or sulfur mustard during active military service together with the subsequent development of chronic conjunctivitis,

keratitis, corneal opacities, scar formation, or the following cancers: Nasopharyngeal; laryngeal; lung (except mesothelioma); or squamous cell carcinoma of the skin.

(2) Full-body exposure to nitrogen or sulfur mustard or Lewisite during active military service together with the subsequent development of a chronic form of laryngitis, bronchitis, emphysema, asthma or chronic obstructive pulmonary disease.

(3) Full-body exposure to nitrogen mustard during active military service together with the subsequent development of acute nonlymphocytic leukemia.

(b) Service connection will not be established under this section if the claimed condition is due to the veteran's own willful misconduct (See § 3.301(c)) or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the claimed condition (See § 3.303).

[59 FR 42499, Aug. 18, 1994]

§ 3.317 Compensation for certain disabilities occurring in Persian Gulf veterans.

(a) *Compensation for disability due to undiagnosed illness and medically unexplained chronic multisymptom illnesses.*

(1) Except as provided in paragraph (a)(7) of this section, VA will pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of a qualifying chronic disability, provided that such disability:

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2016; and

(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

(2)(i) For purposes of this section, a *qualifying chronic disability* means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) A medically unexplained chronic multisymptom illness that is defined

by a cluster of signs or symptoms, such as:

(1) Chronic fatigue syndrome;

(2) Fibromyalgia;

(3) Functional gastrointestinal disorders (excluding structural gastrointestinal diseases).

NOTE TO PARAGRAPH (a)(2)(i)(B)(3): Functional gastrointestinal disorders are a group of conditions characterized by chronic or recurrent symptoms that are unexplained by any structural, endoscopic, laboratory, or other objective signs of injury or disease and may be related to any part of the gastrointestinal tract. Specific functional gastrointestinal disorders include, but are not limited to, irritable bowel syndrome, functional dyspepsia, functional vomiting, functional constipation, functional bloating, functional abdominal pain syndrome, and functional dysphagia. These disorders are commonly characterized by symptoms including abdominal pain, substernal burning or pain, nausea, vomiting, altered bowel habits (including diarrhea, constipation), indigestion, bloating, postprandial fullness, and painful or difficult swallowing. Diagnosis of specific functional gastrointestinal disorders is made in accordance with established medical principles, which generally require symptom onset at least 6 months prior to diagnosis and the presence of symptoms sufficient to diagnose the specific disorder at least 3 months prior to diagnosis.

(ii) For purposes of this section, the term *medically unexplained chronic multisymptom illness* means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multisymptom illnesses of partially understood etiology and pathophysiology, such as diabetes and multiple sclerosis, will not be considered medically unexplained.

(3) For purposes of this section, “objective indications of chronic disability” include both “signs,” in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.

(4) For purposes of this section, disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period